Supreme Court, U.S.
FILED

971572 JAN 26 1998

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTEMBER TERM, 1997

LEO ROGERS DUGAS - PETITIONER

VS.

CLAMONT ENERGY CORPORATION and
CLARON CORPORATION - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

LEO ROGERS DUGAS
15311 HUMMINGBIRD LN.
BAYTOWN, TX 77520
(281) 385-2319

37 pp

QUESTIONS PRESENTED FOR REVIEW

1. Can a Bankruptcy court and the United States Trustee's Office ignore a confirmed chapter 11 plan, where "substantial consummation" has occurred?

2. When a bankruptcy court presides over two different cases in its district, and these two cases are not consolidated, but are however embroiled in an adversary proceeding. Can this bankruptcy court "without notice" to the creditors of one or both of the debtors, *ex parte or sua sponte*, proceed with this adversary and disregard the protection the automatic stay U.S.C.A. 11 § 362, provides for both, the debtors' and creditor's?

3. Can a bankruptcy court transfer a State-Court "removed" action, to a different Bankruptcy Court in another District for "consolidation" purposes, Fed.R.Civ.P. 42(a)?

4. When does the 30 day time period start, for purposes of an appeal, when Fed.R.Civ.P. 77(d) is invoked?

5. With United States District Courts' having original jurisdiction over cases and proceedings arising in or related to a case under title 11 in its judicial district, U.S.C.A. 28 § 1334, is further jurisdiction needed to review the judgment, order, decree of a bankruptcy judge which is a judicial officer of that court, U.S.C.A. 28 § 151?

6. When a reviewing court (court B) states that its without jurisdiction to hear a matter (from court A), and proceeds anyway with its own interpretation of what that court (court B) believes is the facts, is this action done by that reviewing court (court B) appealable to the next higher appellant court (court C), as if that court (court B) actually had jurisdiction to hear the matter before it?

7. Does the policy that mandates appeals from bankruptcy and district courts to be heard "only" in their respective districts, U.S.C.A. 28 § 158(a), and then on to the court of appeals for that district, the district court is in, violate Constitutional Rights, such as "free choice"? Especially when the appellant(s) knows going in that, that court of appeals is out of step with other court of appeals and in all probability *stare decisis* of that court will alter the result the appellant might get in another court of appeals.

LIST OF PARTIES

Listed below are the other parties to the proceedings in the United States Court of Appeals for the Fifth Circuit:

Mr. Jason Riley Searcy
Chapter 7 Trustee, for debtor Clamont Energy Corp.
P.O. Box 3929
Longview, Texas 75606
(903) 757-3399

Mr. Glendon Bryan Adams
Counsel for Claron Corporation
13003 Murphy Road Suite B-2
Stafford, Texas 77477
(713) 933-7188

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	2
JURISDICITION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	8
APPENDIX TO THE PETITION	9

TABLE OF AUTHORITIES CITED

CASES — Page

United States Supreme Court

Federated Department Stores v. Moite, 452 U.S. 394 ... 2

Kalb v. Feuerstein, 308 U.S. 433 (1940) 7

Stoll v. Gotlieb, 305 U.S. 165 (1938) 2

Stone v. INS 115 S.Ct. 1537 (1995) 8

United States Court of Appeals

Fiore v. Washington County Com. Mental Health Cir.
960 F.2d (1st Cir. 1992) 8

Matter of Manges, 29 F.3d 1034 (5th Cir. 1994) 3

Matter of Wade, 991 F.2d 402 (7th Cir. 1993) 3

Bankruptcy Court

In Re Bankeast Corp.,
142 B.R. 12 (Bkrtcy.D.N.H. 1992) 3

Winom Tool and Die, Inc.,
173 B.R. 613 (Bkrtcy.E.D.Mich. 1994) 3

STATUTES AND RULES

U.S.C.A. title 11:

§ 362 5,7,8
§ 1101(2)(A)(B)(C) 3
§ 1128 2
§ 1129(a) 2
§ 1141(a) 7

title 28:
§ 1254(1) 2

Federal Rules of Civil Procedure:
Rule 52(b) 6
Rule 60(b) 6
Rule 77(d) 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment(s) below.

_____

Leo Rogers Dugas,
pro se, petitioner

OPINIONS BELOW

None of the courts below have published any ruling(s).

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 28, 1997. There is no post-decision motion before the United States Court of Appeals. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The Fourteenth Amendment to the Federal Constitution (due process).

STATEMENT OF THE CASE

On September 9, 1989 an order for relief by debtor Clamont Energy Corporation (Clamont) in a chapter 11 case no. 89-11943, in the Bankruptcy Court for the Eastern District of Texas, Beaumont Division. Shortly thereafter a trustee was appointed and this trustee proposed a Plan of Reorganization to the creditors and was approved by virtually all the creditors, see *Stoll v. Gotlieb* 305 U.S. 165,172, 175 (1938). This Plan was to liquidate the chapter 11 estate in chapter 11 instead of a straight chapter 7 and this issue was discussed at the confirmation hearing, see *Federated Department Stores, Inc. v. Moite* 452 U.S. 394, 398.

On May 29, 1991 after a confirmation hearing, U.S.C.A. 11 § 1128, an order confirming Clamonts' chapter 11 plan (to liquidate) was signed, U.S.C.A. 11 § 1129(a) and the chapter 11 trustee was discharged and made fiscal agent over the Plan to liquidate the chapter 11 estate property. The parties that disagreed with this Plan (one being the president of the debtor corporation) eventually were persuaded to go alone with this Plan or the "cram down" provision was used. This Plan was never stayed, appealed nor revoked, see

Matter of Manges 29 F.3d 1034, 1039 (5th Cir. 1994) and the liquidating agent within three weeks of the docketing of the Plan in the bankruptcy court had already started selling Plan property and had taken over the running of the debtors business, U.S.C.A. 11 § 1141 §§ 1101(2)(A)(B)(C), closing the case as the chapter 11 estates property left the estate, see *Winom tool and Die, Inc.* 173 B.R. 613 (Bkrtcy.E.D.Mich. 1994).

The attorney firm for the chapter 11 trustee moved the bankruptcy court in the Eastern District of Texas, to convert the chapter 11 case to one under chapter 7. The attorney firm's reason was it had not received its attorney fees, see **Appendix "A"**. Another creditor being an attorney himself, represented another creditor who moved the bankruptcy court to convert to a chapter 7 case, although all creditors were bound by the Plan, U.S.C.A. 11 § 1141(a), the case was converted on June 19, 1992 and a chapter 7 trustee was appointed a Mr. Jason Riley Searcy (Searcy). Absent a provision in the Plan for conversion to a chapter 7 case, it would seem that did not stop the creditors from using a provision for the bankruptcy court to retain jurisdiction.

> "Congress did not intend that the Bankruptcy Court should, after an approval of a plan ... have power to remain a wet-nurse to the reorganized company. A bankruptcy court cannot obtain that power merely by inserting a provision reserving jurisdiction.", quoting *In Re Bankeast Corp.* see 142 B.R. 12 (Bkrtcy.D.N.H. 1992). It would seem that the United States Trustee missed his opportunity to step in by allowing this action to be converted and stay in chapter 7 for nearly 6 years, when Plan was approved on May 29, 1991, see *Matter of Wade,* 991 F.2d 402, 406 (7th Cir. 1993).

Clamont's presidents' (Mr. Lance Dreyer), mother, Ms. Peggy Dreyer, started up a company called Claron Corporation (Claron) and Mr. Lance Dreyer became one of its agent(s). Claron obtained a judgment against an ex-employee of Clamont, Mr. Buescher, who had helped liquidate some of the Plan property. Claron (erroneously believed Mr. Buescher was d/b/a J.S.B. Petroleum Inc.) notified the oil gather who was gathering oil from a oil lease that at one time was property of the chapter 11 estate. Claron notified this oil gather, Howell Crude, of the judgment Claron had and that to

pay any money to anyone other than Claron would be wrong. Mr. Buescher on November 30, 1992 filed for relief under chapter 7 in the Southern District of Texas, Houston Division case no. 92-50141. Four (4) days after Mr. Buescher filed for bankruptcy, Howell Crude filed an action in Harris County Court (Texas) case no. 611,156, because of Claron's judgment against Mr. Buescher.

On April 19, 1993 this state-court case was "removed" to the federal bankruptcy court in the Southern District of Texas, Houston Division under adversary no. 93-4250 and Mr. Bueschers' chapter 7 trustee, Ms. Johnson intervened.

On January 28, 1993 Searcy the 7 trustee filed an adversary proceeding no. 93-4054 against the former chapter 11 trustee in his personal bankruptcy case no. 92- 47994-H4-7 and his bonding company was brought in later. This adversary proceeding was dismissed "with prejudice" with all parties to bear its on cost, this action taken in the Southern District Bankruptcy Court of Texas. However, in the Eastern District of Texas where Searcy's chapter 7 case is, (and where there was no pending action against the chapter 11 trustee or his bonding company) the bonding company with court approval, see **Appendix "B"**, gave over to Searcy $45,000.00 (Forty-Five Thousand Dollars) ?

On May 10, 1993, Searcy moved against petitioner and all the corporation's I and my wife were in, and several other parties who by now have been dismissed in this adversary no. 93-1031, including Claron. In August of 1993, Searcy moved the Eastern District bankruptcy court to allow him to appoint an operator to operate the oil and gas properties (Plan property) in dispute until Searcy's adversary ended. Because all the funds were ordered into a Registry of the Court, both in the county court and the bankruptcy court, all expenses were being paid by the defendant's personally and this way money generated by these properties could be released to keep these leases alive using Searcy's operator. With this in mind petitioner did not object to Searcy's action to appoint an operator. However, to date Searcy claims he did not appoint a operator, that he had court approval to do and he does not have any money generated by the defendant's property while awaiting an outcome of Searcy's adversary no. 93-1031.

On January 10, 1994 petitioner filed for relief in the Eastern District in a chapter 13 case no. 94-10027. Shortly thereafter Searcy with court approval compromised and settled with Claron only and sold to Claron whatever right the debtor Clamont had in Searcy's adversary. Searcy's order presented to that court included the removed state-court action (no. 93-4250), still in the Southern District of Texas and an action Searcy had not intervened in nor did Searcy consolidate with his adversary no. 93-4054 he had pending against the chapter 11 trustee, which seems to be a "waiver" to make any claim to adversary no. 93-4250.

On February 23, 1994, the Southern District bankruptcy court transfered its adversary no. 93-4250 to the Eastern District, to be docketed with adversary no. 93-1031 which Claron believed they now had control of and had asked for its transfer, see **Appendix "C"**. This was done without petitioner's knowledge and without Claron (a creditor in my bankruptcy case) being granted a motion to lift the automatic stay U.S.C.A. 11 § 362. Further, the bankruptcy code would never allow an "insider" in Searcy's chapter 7 case to use the avoidance powers. Claron was sold property that Searcy never avoided, (to recover the title to Plan property sold by the liquidating agent, if he indeed could attack Plan property) and therefore leaving Claron without title to the property in dispute.

Listed in petitioners' bankruptcy chapter 13 case were the corporations and accounts receivable (being the money generated by the properties owned by these corporations). Claron had moved the county court to release the money held in the registry of that court under the pretense that adversary no. 93-4250 was closed, see **Appendix "D"**. Petitioner moved the bankruptcy court (Eastern District) to have that money disgorged and showed that court the action taken in violation of U.S.C. 11 § 362. This motion to disgorge was heard and denied and was appealed to the United States District Court in case no. 1:95-cv-01132. Both courts did not accept the State of Texas' government document signed by the County Clerk that showed that funds were released to Claron and petitioner has recently appealed to the Fifth Circuit court of appeals.

After a hearing on a Show Cause Order generated by the bankruptcy court (Eastern District) *sua sponte* an Order of Remand issued, see **Appendix "E"**. Petitioner had filed a motion for Reconsideration and Recusal, this motion was before the bankruptcy court when the Order of Remand was docketed on May 14, 1996. Petitioner after learning his Motion for Reconsideration and Recusal was denied and docketed on June 11, 1996, see **Appendix "F"**, that action in the county court on the Remand had already concluded on June 4, 1996, see **Appendix "G"**.

Because "no notice" had been sent to petitioner that the Order of Remand had issued, petitioner relying on Federal Rules of Civil Procedure Rule 77(d) filed an appeal to the United States District Court in case no. 1:96-cv-00478.

The district court denied petitioners' appeal as out of time and thus having no jurisdiction, yet that court chose to embellish on the matters not before it, see **Appendix "H"**. Because of constitutional beliefs of "due process" petitioner appealed case no. 1:96-cv-00478 to the Fifth Circuit under case no. 96-41030, styled *In the Matter of CLAMONT ENERGY CORPORATION INC.* and on January 27, 1997 petitioner's chapter 13 Order of Discharge was filed of record.

After appealing the districts courts' decision to deny the appeal before it, petitioner invoked Fed.R.Civ.P. Rule 60(b), (because of the mistakes the district court made in its reading of the record before it). The district court's response to this motion filed on December 20, 1996 was to deny it on February 26, 1997, see **Appendix "I"**. Seven days later on March 5, 1997 petitioner invoked Fed.R.Civ.P. Rule 52(b) for findings of fact and conclusion of law and this motion was also denied, see **Appendix "J"**. Because the Rule 60(b) and Rule 52(b) denials were issued under the separate document Rule 58, both denials were appealed to the Fifth Circuit court of appeals case no. 97-40484 and case no. 97-40485.

On October 28, 1997 the court of appeals for the Fifth Circuit denied both case no. 97-40484, see **Appendix "K"**, and case no. 97-40485, see **Appendix no. 12**, and were filed of record. Whereby petitioner now respectfully presents this *Petition for Writ of Certiorari* now before this Court.

REASON FOR GRANTING THE PETITION

At issue here is, the public cannot rely on a Confirmed Plan and believe that the United States Trustee, (the watch dog of bankruptcy cases) will perform their duties. Should not the United States Trustee also review the actions of the bankruptcy clerk. It would seem that if a bankruptcy court is constantly issuing orders and opinions that are appealed, that it just might be the law clerk that is the problem and not the court itself.

Absent a strong safeguard of the automatic stay U.S.C.A. 11 § 362 (even from the courts themselves), can the public rely on this Stay. Will a debtor and creditor alike, relax after a petition for relief is filed. Or will this Court allow the parties that ignore the Stay simply shrug their shoulders and say "I didn't know there was a bankruptcy case and I believe my action against the debtor should stand anyway". This is however the results the petitioner has endured. Even the bankruptcy court(s) seems oblivious to the Stay, without ever notifying the creditors of the debtor, they issue orders that effect the property of the estate, without regards for the creditors constitutional rights of "due process". Should not all parties to a bankruptcy case rely on a fair case, that does not cost so much to all concern. This Court can stop this trend of degradation of the Stay, that has made filing for protection under chapter 13 a costly affair. Had not the petitioner started to take matters in his own hands, the petitioner would of had to convert to a case under chapter 7. Not because petitioner should of filed under chapter 7 first, but because of all the legal maneuvers the creditors and others can do when the Stay is not adhered to. If however the Stay as adopted by Congress was upheld and that "all" meant "all" in § 362(a) then § 362(c) would protect "all" concerned from any court that did not have an order issued pursuant to § 362(d). This would make "all" respect a bankruptcy case and upon finding such a violation of the Stay simply render that act as VOID, see *Kalb v. Feuerstein*, 308 U.S. 433, 438 (1940), except however for § 362(b). If petitioner could have had the protection of the Stay then these past years tied up in one court or another and tying up the courts, because someone "could" move against a debtors' estate. These actions

violating the Stay would disappeared, as other action(s) in many courts would also cease, given the teeth § 362(h). However petitioner may portray the results of the violation of the Stay, any opposing party that wishes to take a chance that their action will not be discovered or that the debtor will not have the wherewithal to hire an attorney, then the debtor simply loses.

The Court of Appeals for the Fifth Circuit, has by not ruling, ruled, in favor for themselves. Because not to have ruled as did other Circuits on a Rule 58 document, the Fifth Circuit is at odds now with this other Circuit, see *Fiore v. Washington County Com. Mental Health Ctr.* 960 F.2d 229 (1st Cir. 1992) and this own Court's ruling in *Stone v. INS* 115 S,Ct. 1537, 1548 (1995), as petitioner proffered before both the district court and the Fifth Circuit with this Court's ruling in, *Stone, supra.*

CONCLUSION

It has been shown to this Court how awful the system has become for someone to have to come this far with an action "just" to protect their property from parties hell bent on taking it. Nothing in petitioners adult life could have made me believe all what has happened and still happening was possible in these United States. This Court nor petitioner can began to guess how many fellow citizens have and will go thru this same scenario, except many will fall by the wayside because they cannot afford a lawyer. This Court can today at least help by putting more teeth into U.S.C. 11 § 362, and relieve many parties of soaring cost just to put their lives back together under the Bankruptcy Code. This one act of this Court (§ 362) will reduce the case load on many courts, if this Court does not believe so, just look what happen to the petitioner.

This is why I, Leo Rogers Dugas, pro se petitioner have this 25th day of January, 1998 submitted my *Petition for a Writ of Certiorari,* to this Supreme Court of the United States.

Respectfull submitted,

_____

Leo Rogers Dugas, pro se

INDEX TO APPENDICES

1. The opinion(s) of the United States Court of Appeals, for the Fifth Circuit is unplubished, and their rulings appear at Appendix "L" and "K" to the petition.

2. The opinion(s) of the United States District Court, for the Eastern District of Texas is unplublished, and its ruling(s) appear at Appendix "J", "I" and "H" to the petition.

3. The State Court Order ordering the release of funds appears at Appendix "G".

4. The Bankruptcy court's order denying reconsideration and recusal appears at Appendix "F".

5. The bankruptcy's Order of Remand appears at Appendix "E".

6. The State court Order releasing funds appears at Appendix "D".

7. Order of bankruptcy court in Southern District of Texas, appears at Appendix "C".

8. Order approving compromise settlement and release agreement, appears at Appendix "B".

9. Order to Show Cause as to why case should not be converted to chapter 7, appears at Appendix "A" to the petition.

Filed
April 1 4:34 PM '92

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

IN RE:	§	
	§	
CLAMONT ENERGY CORPORATION	§	Case no. 89-11943
f/k/a UNITED TEXAS CORPORATION	§	(Chapter 11)
f/k/a UNITED TEXAS PETROLEUM	§	
CORP.,	§	
DEBTOR.	§	

ORDER TO SHOW CAUSE AS TO WHY
CASE SHOULD NOT BE CONVERTED TO CHAPTER 7

The Court has considered the Motion for Order to Show Cause as to why Case Should Not be Converted to Chapter 7 and it appearing to the Court that the Trustee has not paid expenses of administration, Stuart B. Collins is hereby ordered to appear before this Court on the 21st day of April at 9:00 a.m. and at such hearing to show cause why this case should not be converted to one under 7.

DATED this 1st day of April, 1992.

"/s/ Donald R. Sharp"
DONALD R. SHARP
United States Bankruptcy Judge

Order Submitted by:

By: "/s/ Mitchell A. Seider
Mitchell A. Seider
SHEINFELD, MALEY & KAY
3700 First City Tower
Houston, Texas 77002
(713) 658-8881

"A"

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

IN RE:	§	
	§	
CLAMONT ENERGY CORPORATION	§	Case no. 89-11943
f/k/a UNITED TEXAS CORPORATION	§	
f/k/a UNITED TEXAS PETROLEUM	§	
CORP.,	§	Chapter 7

EOD NOV 16 '93

ORDER APPROVING COMPROMISE SETTLEMENT AND RELEASE AGREEMENT

ON THIS DAY CAME ON TO BE CONSIDERED the Motion to Approve Compromise Settlement and Release Agreement filed by Jason R. Searcy, Trustee herein; and it appearing to the Court that the Motion is well taken and in the best interest of the estate, it is therefore

ORDERED, ADJUDGED AND DECREED THAT THE Motion to Approve Compromise Settlement and Release Agreement is hereby granted; and that Jason R. Searcy, Trustee for the estate of Clamont Energy Corporation is hereby authorized to execute any and all documents necessary for completion of the Agreement; and

BE IT FURTHER ORDERED that upon execution of the Order hereon the sum of $45,000.00 shall be tendered to the Trustee by Continental Casualty Company and negotiated on behalf of this estate, without further delay.

SIGNED this 15th day of November, 1993.

"/s/ Donald R. Sharp"
Presiding Judge

Prepared in the Law Office of:
Jason R. Searcy
P.O. Box 3929
Longview, Texas 75606

"B"

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
Clamont Energy Corporation	§	ENTERED
	§	FEB 23 1994
Howell Crude Oil	§	
Company, et al.,	§	Adv. no. 93-4250
Plaintiffs	§	
vs	§	
JSB Petroleum, Inc., et al.,	§	
Defendants	§	

ORDER RETAINING CASE ON THE DOCKET AND TRANSFERRING VENUE AND FUNDS ON DEPOSIT IN THE COURT'S REGISTRY TO THE U.S. BANKRUPTCY FOR THE EASTERN DISTRICT OF TEXAS

BE IT REMEMBERED that on this day came on for consideration the motion of the Defendant, CLARON CORPORATION, to retain a case on the docket and transfer venue. The Court finds that good cause exists to grant Defendant's motion. Therefore;

IT IS ORDERED by the Court that the above-referenced adversary case is retained upon the court's docket.

IT IS FURTHER ORDERED that the venue of the above-referenced adversary be transferred to the Eastern District of Texas to be docketed under Case No. 89-11943, Adversary Case No. A-93-1031-S, and that all funds currently on deposit in the registry of the Court in the above-referenced adversary be transferred to the Eastern District of Texas to be docketed under Case No. 89-11943, Adversary No. A-93-1031-S.

Signed this 22nd day of Feb., 1994.

"/s/ William Greendyke "
U.S. Bankruptcy Judge

"/s/ Glendon B. Adams "
Attorney for Claron Corporation

"C"

818-31-2077

NO. 611156-004 & 901

HOWELL CRUDE OIL COMPANY	) (	County Civil
	) (	Court at Law No.1
VS.	) (	
	) (	
JSB PETROLEUM, INC., and	) (	Harris County,
CLARON CORPORATION	) (	Texas

ORDER RELEASING FUNDS HELD
IN THE REGISTRY OF THE COURT

BE IT REMEMBERED that on this day came on the motion of CLARON CORPORATION for the release of the funds on file with the registry of the Court in the above-referenced case. After reviewing the pleadings, and the authority cited by counsel, the Court finds that;

1. All action pending under this Cause is closed.
2. The funds held in the Registry of the County Civil Court at Law No. 1 are the property of Claron Corporation through the compromise and settlement agreement in Adversary Action under Case No. 93-4250 and the subsequent Trustee's Assignment of all of Clamont Energy Corporation's interest in and to Adversary Case No. 93-4250 and any funds on deposit in the Registry of the Court in Adversary No. 93-4250 and all related cases Claron Corporation, Assignee. Therefore,

IT IS ORDERED by the Court that the Clerk of the County Court at Law No. 1 shall forthwith pay $23,716.43 with accrued interest, held in the Registry of the Court in this case to CLARON CORPORATION, Box 56585 Houston, Texas 77256-6585; telephone 713-933-0619.

Signed this 6th day of October, 1994.

"/s/ Ed Landry "
Presiding Judge

"/s/ Glendon B.Adams "
Attorney for Claron Corporation

Filed
94 OCT-7

"D"

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

IN RE:	§	Case no. 89-11943
Clamont Energy Corporation,	§	(Chapter 7)
Debtor	§	
Jason R. Searcy, U.S. Trustee	§	**EOD MAY 14 '96**
Plaintiff	§	
V.	§	Adversary No. 93-1031
JSB Petroleum Inc., et al.,	§	
Defendants	§	

ORDER REMANDING ADVERSARY PROCEEDING
AND TRANSFERRING THE FUNDS TO A STATE COURT

BE IT REMEMBERED that on the 16th of April, 1996, came on for consideration the Court's order dated March 5, 1996, wherein the Honorable Houston Able, U.S. Bankruptcy Judge, ordered all parties to appear in Court and show-cause why the above-referenced bankruptcy adversary should not be Remanded and the funds held in this adversary in the registry of this Court should not be transferred to its original state-court proceeding. Appearing for this hearing was Attorney, Glendon B.Adams, for the Claron Corporation, Priscella M. Hubenak, Assistant Attorney General of Texas, Jason R. Searcy, U.S. Bankruptcy Chapter 7 Trustee, and Leo Roger Dugas. All parties announced ready for trial. The Court then considered the pleadings on file and the arguments of counsel. At the conclusion of the hearing, the Court held for the reasons stated into the record that no further bankruptcy issues needed adjudication, including title to the funds now being held in the registry of the Court; and that any future issues regarding the right to possession of funds held in the registry of the Court could be properly adjudicated in the original state-court proceeding. Therefore,

IT IS ORDERED that the above-referenced bankruptcy adversary proceeding is Remanded to County Civil Court at Law Harris County, Texas Cause No. 611,156;

IT IS FURTHER ORDERED that the Clerk of the U.S. Bankruptcy Court for the Eastern District of Texas, Beaumont Division, shall transfer all funds in the registry of the Court in the above-referenced bankruptcy adversary proceeding to the Honorable Beverly Kaufman, Harris County

Clerk, P.O. Box 1525, Houston, Texas 77251-1525, to be deposited in the registry of the Court in Cause No. 611156, styled Howell Crude v. JSB Petroleum, in Harris County Civil Court at Law #1.

All other relief is ordered denied.

Signed this 9th day of May, 1996.

"/s/ Houston Able "
U.S. BANKRUPTCY JUDGE

"/s/ Glendon B. Adams "
Prepared in the Law Offices of
Glendon B. Adams
Attorney for Claron Corporation
13003 Murphy Road, Suite B-2
Stafford, Texas 77477
713/ 933-7188 Telephone
713/ 495-9217 Telecopier
Texas Bar No. 00859100
Fed. Adm. No. 4547

My signature above certifies that a copy of this order has been served upon all parties of record.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

IN RE:	§	
Clamont Energy Corporation,	§	CASE NO. 89-11943
Debtor,	§	Chapter 7
Jason Searcy, Trustee for	§	Adversary No. 93-1031
The Bankruptcy Estate of	§	
Clamont Energy Corporation,	§	
Plaintiff,	§	Filed
v.	§	JUN 11 1996
J.S.B. Petroleum, Inc., et al.,	§	
Defendants.	§	

ORDER DENYING MOTION
FOR RECONSIDERATION AND RECUSAL

Before the Court is a Motion For Reconsideration And Recusal ("Motion") filed by defendant Leo Rogers Dugas ("Dugas") on May 9, 1996. Further, Dugas asserts that the Court should reconsider the order remanding this proceeding to state court the issues involved are "for the federal courts, not county judge to decide."(1) Further, Dugas asserts that the Court should recuse itself because it has been "tainted by all this information before trial". For the reasons stated herein, the Court is of the opinion that the Motion should be denied.

RECONSIDERATION

Dugas fails to explain in the Motion how the Court erred in the determination that this proceeding should be remanded. The Court's reasons why this proceeding should be remanded were clearly outlined in the Court's Order Setting Show Cause Hearing (2) and were restated at the hearing held on April 16, 1996. Without once again restating the Court's reasons, the Court will just restate that remand is proper because this bankruptcy estate has absolutely no interest in this proceeding and that all remaining causes of action are based on state law. Thus, judicial economy was best served by remanding this proceeding to state court. Whether or not Dugas has superior title to the property in dispute, as he asserts, will be determined in state court.

(1) The order remanding this proceedings was entered on May 14, 1996.
(2) Entered on March 5, 1996.

"F"

RECUSAL

Dugas essentially asserts that the Court should recuse itself because it has been "tainted" by pretrial matters. Dugas cites no authority for this request. Because the matter is being remanded, the request to recuse is moot. However, for the purpose of making a complete record, the Court will make a comment on this request.

A request to recuse a bankruptcy judge must be made pursuant to 28 U.S.C. § 455, see 13A Charles A. Wright Et Al., Federal Practice and Procedure § 3542 (1984). Section 455 of Title 28 provides in relevant part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]

Recusal may be mandated even though no actual partiality exist. *Hall v. Small Business Admin.*, 695 F.2d 175, 178 (5th Cir. 1983). The standard for recusal is an objective one: Whether a "reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality." In re *Continental Airlines Corp.*, 901 F.2d 1259, 1262 (5th Cir. 1990) (quoting *Health Services Acquisition Corp. v. Liljeberg*, 796 F.2d 796, 800 (5th Cir. 1986), *aff'd*, 486 U.S. 847 (1988)). Therefore, the recusal standard is one of reasonableness and should not be interpreted to require recusal standard on spurious or vague charges of partiality. *Smith v. Pepsico, Inc.*, 434 F.Supp. 524 (D.C. Fla. 1977). A motion for recusal is committed to the sound discretion of the judge and his decision will only be reversed if there has been an abuse of discretion. *In re Hipp, Inc.*, 5 F.3d 109, 116 (5th Cir. 1993). Prejudice must be personal and it must stem from an extrajudicial source which would result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. *United States v. Merkt*, 794 F.2d 950, 960 (5th Cir. 1986), *cert. denied*, 480 U.S. 946 (1987). The fact that the Court has some general knowledge from prior hearings about the underlying facts of this proceeding does not necessitate the recusal of the Court. *See Liteky v. United States*, 114 S.Ct. 1147, 1155 (1994); *Weber v. Garza*, 570 F.2d 511, 512 n.1 (5th Cir. 1978).

Because Dugas fails to state what specific facts learned by the Court during the pretrial hearings "tainted" the Court, the Court is uncertain why it should recuse itself. The Court has no personal bias or prejudice concerning a party or personal knowledge of any evidentiary facts concerning this proceeding. Further, the Court has not made a pre judgment regarding the veracity of the allegations. Accordingly, there is no basis for the Court to recuse itself.

THEREFORE,

IT IS ORDERED that the Motion is DENIED,

IT IS SO ORDERED, ADJUDGED AND DECREED.

SIGNED this 10th day of June, 1996.

"/s/ Houston Able "
Houston Able, Chief Judge
U.S. Bankruptcy Court
Eastern District of Texas

850-25-2691

NO. 611156

HOWELL CRUDE OIL CO., et al.
VS.
JSB PETROLEUM, INC. and
CLARON CORPORATION

X County Civil
X Court at Law No.1
X Harris County,
X Texas

ORDER RELEASING FUNDS HELD
IN THE REGISTRY OF THE COURT

BE IT REMEMBERED that on this day came on the motion of CLARON CORPORATION for the release of the funds on file with the registry of the Court in the above-referenced case. After reviewing the pleadings, and the authority cited by counsel, the Court finds that;

1. All action pending under this Cause is closed.

2. The funds held in the Registry of the County Court at Law No, 1 are the property of Claron Corporation through the compromise and settlement agreement in Adversary Action under Case No. 93-4250 and the subsequent Trustee's Assignment of all of Clamont Energy Corporation's interest in and to Adversary Case No. 93-4250 and any funds on deposit in the Registry of the court in adversary No. 93-4250 and all related cases to Claron Corporation, Assignee. Therefore,

IT IS ORDERED BY THE Court that the Clerk of the County Civil Court at Law No. 1 shall forthwith pay the sum of $36,621.00, with accrued interest, held in the Registry of the Court in this case to Claron Corporation, P.O. Box 56585, Houston, Texas 77256-6585, telephone number 713/933-0119.

Signed this 4th day of June, 1996.

"/s/ Eugene Chambers "
Presiding Judge

Approved as to form:
"/s/ Glendon B. Adams "
Glendon B. Adams
Attorney for Claron Corporation
13003 Murphy Road, Suite B-2
Stafford, Texas 77477

Filed
96 JUN-4

"G"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Filed
96 SEP 26

In the Matter of:
CLAMONT ENERGY CORPORATION, Debtor.

LEO ROGER DUGAS	§	
Appellant	§	
VS.	§	CIVIL ACTION
CLAMONT ENERGY	§	No. 1:96-CV-478
CORPORATION	§	
Appellee	§	

MEMORANDUM AND ORDER

This is a pro se appeal by Leo Roger Dugas from the bankruptcy court's order remanding this proceeding to state court. Although old bankruptcy cases, like old soldiers, never die, this Court shall endeavor to put this one to rest. For reasons raised by neither party, this Court dismisses this appeal for lack of jurisdiction.

I.

On September 6, 1989, Clamont Energy Corporation ("Clamont") filed a petition for reorganization under Chapter 11 of the United States Bankruptcy Code. Stuart Collins ("Collins") was appointed trustee for the estate. Shortly thereafter, Collins began selling off the assets, primarily oil and gas leases to his cronies Roger Dugas and Jeff Buescher and the various companies they owned. Because of these misdealings, the bankruptcy court removed Collins from the position of trustee in June of 1992.

The leases Collins sold as trustee were not rescinded however, and continued to generate revenue. Predictably, a dispute arose about who was entitled to that revenue. On December 3, 1992, Howell Oil Company ("Howell") filed an Original Petition in Interpleader styled *Howell Crude Oil Company v. JSB Petroleum, Inc. and Claron Corporation* in the County Court at Law No.1 of Harris County. Howell filed the action after JSB Petroleum ("JSB") and Claron Corporation (Claron) each asserted a claim to proceeds from the sale of crude oil to Howell under a lease sold by Collins. Rather than intervene in the state court action between

Claron and JSB the new trustee ("Trustee") for Clamont estate initiated an adversary proceeding in the United States Bankruptcy Court for the Eastern District of Texas. The Trustee's complaint listed as defendants all the parties to the state court action and concerned ten of the leases at issue in the state court action.

On February 4, 1994, the bankruptcy court entered an order approving a compromise settlement between the Trustee and Claron. Pursuant to the terms of the settlement. the Trustee transferred to Claron all of the "right title and interest held by the bankruptcy estate". Specifically included in this settlement was the Clamont's estate entire interest in the property at issue in both the federal and state court proceedings. Accordingly, the settlement eliminated any interest the Clamont estate had in either the federal or state court proceedings.

Nevertheless on February 23, 1994 the interpleader action between JSB and Claron was transferred and consolidated into the Trustee's adversary proceeding in the United States Bankruptcy Court for the Eastern District of Texas(1). After concluding that Claron could not pursue Clamont's claims under the Bankruptcy Code, the bankruptcy court held a hearing to show cause why the case should not be remanded back to state court on April 16, 1996. At the close of the hearing, the bankruptcy court ruled that it would remand the proceeding because: 1) the remaining causes of action were based on state law; (2) the Clamont estate no longer had any interest in the proceeding; (3) none of the remaining parties resided in the Eastern District; and, (4) the state court could try the action sooner. The bankruptcy court signed its order remanding the proceeding to state court May 14, 1996.

II.

Under Bankruptcy Rule 8002(a), a notice of appeal to a district court from a bankruptcy judge's order must be filed within ten days of entry of the order. The time limit is strictly construed and is jurisdictional in effect. Failure to file a timely notice of appeal within the meaning of Rule 8002 is a jurisdictional defect that bars appellate review. *In re Moody*, 41 F.3d 1024, 1026 (5th Cir. 1995), citing, *Abraham v. Aguilar*, 861 F.2d 873, 874 (5th Cir. 1988). Bankruptcy Rule 8002 states:

---

(1) On April 19, 1993 the state court action was removed to the United States Bankruptcy Court for the Southern District of Texas.

> *Effect of Motion on Time for Appeal.* If a timely motion is filed by any party: ... (2) under Rule 9023 to alter or amend the judgment; or (3) under 9023 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any such motion.

Although the Fifth Circuit has not squarely addressed the issue, other circuits have held that a motion for reconsideration is properly classified as a Bankruptcy Rule 9023 motion that tolls the time limitation for filing a notice of appeal. *See e.g., In re Weston,* 41 F.3d 493, 495 (9th Cir. 1994) and *In re Mike,* 796 F.2d 382, 383 (11th Cir. 1986). "A different rule would be a waste of judicial resources, requiring a party to file an appeal when the granting of a pending motion to reconsider might eliminate the need for an appeal." *Weston,* at 495, citing, *In re Branding Iron Steak House,* 536 F.2d 299. 301 (9th Cir. 1976).

In this case the bankruptcy court orally announced that it was remanding this proceeding to state court on April 16, 1996. Appellant filed his motion for reconsideration May 9, 1996, five days before the court signed its order. The court overruled Appellant's Motion for Reconsideration on June 11, 1996. Assuming, without deciding, that Appellant's Motion for Reconsideration was valid, his notice of appeal was due on June 21, 1996.(2) Appellant filed his notice of appeal on June 28, 1996 seven days too late.

On request, a bankruptcy judge can extend the ten-day period for an additional twenty days. Bankruptcy Rule 8002(c) states:

> The Bankruptcy judge may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of time otherwise prescribed by this rule. A request to extend time for filing a notice of appeal must be made before the time for filing a notice of appeal has expired, except that a request made no more than 20 days after the expiration of the time for filing for a notice of appeal may be granted upon a showing of excusable neglect . . .

(2) Bankruptcy Rule 9006(a) provides that in computing a period of time, the day of the event causing the period of time to begin to run shall be included in the computation. The first day of the ten-day period for notice of appeal was therefore the day after entry of judgment, namely June 12, 1996.

Appellant neither filed a request for extension of time within the initial ten-day period, nor made a showing of excusable neglect entitling him to request an extension within the thirty-day period following the entry of the bankruptcy court's order. Thus, Appellant's notice of appeal was untimely.

Therefore, it is ORDERED that the appeal in this case is hereby DISMISSED.

SIGNED this 26 day of September, 1996.

"/s/ Joe J. Fisher"
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Filed
97 FEB 26

Leo Roger Dugas	§	Civil Action
Appellant	§	No. 1:96-cv-478
vs.	§	
Claron Corporation	§	Appeal from
Appellee	§	Bankruptcy Court

ORDER

Before this Court is Appellant's "Motion to Alter and Amend Memorandum and Order EOD September 30, 1996 Pursuant to Fed. R. Civ. P. 60(b)." The Court, having reexamined the record and its order dismissing this appeal for lack of jurisdiction, finds Appellant's motion without merit.

Therefore, this Court hereby DENIES Appellant's motion to amend this Court's Memorandum and Order entered September 26, 1996.

SIGNED this 26th day of February 1997.

"/s/ Joe J. Fisher"
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Filed
97 MAR 31

Leo Roger Dugas	§	Civil Action
Appellant	§	No. 1:96-cv-478
vs.	§	
Claron Corporation	§	Appeal from
Appellee	§	Bankruptcy Court

ORDER

Before this Court is Appellant's *Motion for Findings of Fact and Conclusions of Law*. On September 30, 1996, this Court dismissed this appeal for lack of jurisdiction because Appellant failed to file his notice of appeal in the Bankruptcy Court timely. Consequently, this Court could not now, even if it so desired, make findings of fact or conclusions of law germane to this appeal.

Therefore, this Court hereby DENIES *Appellant's Motion for Findings of Fact and Conclusions of Law* in all respects.

SIGNED this 31th day of March 1997.

"/s/ Joe J. Fisher"
United States District Judge

"J"

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Filed
Oct 28 1997

No. 97-40484
Summary Calendar

In the Matter of:
CLAMONT ENERGY CORPORATION, INC., Debtor

LEO ROGERS DUGAS, Appellant,

versus

CLAMONT ENERGY CORPORATION, INC.,
CLARON CORPORATION, INC., Appellees.

Appeal from the United States District Court
For the Eastern District of Texas
(1:96-CV-478)

Before POLITZ, Chief Judge, JOLLY and STEWART, Circuit Judges. PER CURIAM: *

Leo Roger Dugas, proceeding *pro se*, appeals the district court's dismissal of his appeal of the judgment of the bankruptcy court. the dates of action in this cause are important. On April 16, 1996 the bankruptcy court orally announced that the proceeding would be remanded to state court. On May 9, 1996 Dugas filed a motion for reconsideration five days before the court signed a written order on remand. The bankruptcy court denied this motion on June 11, 1996. Dugas noticed an appeal to the district court 17 days later on June 28, 1996. The district court dismissed

---

* Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

the appeal as untimely. Dugas appealed to this court within 30 days of the ruling by the district court.

Jurisdiction is always a threshold issue. Accordingly, we do not reach the merits of Dugas' motion for we must conclude that the district court correctly ruled that it was compelled to dismiss the appeal of the bankruptcy court's order for failure of a timely appeal. Although the district court has jurisdiction to hear appeals from the bankruptcy court,(1) to effectuate that appellate jurisdiction a party must file a notice of appeal within 10 days after entry of the order subject to the appeal.(2) The effect of a motion, such as one under Federal Bankruptcy Rule 9023 to alter or amend the judgment, shall run from the entry of the order denying such motion.(3) Therefore, Dugas' failure to file a notice of appeal within 10 days after the bankruptcy court's ruling on the motion to reconsider compelled dismissal of the appeal by the district court.(4) That failure likewise compels our ruling.

The judgment of the district court is AFFIRMED.

---

(1) See 28 U.S.C. § 158(a).

(2) **In re Moody**, 41 F.3d 1024 (5th Cir. 1995).

(3) Fed.Bankr.R. 8002(b)(2).

(4) This court has previously held that a motion to reconsider, brought before the time to appeal has expired, is more properly treated as a Rule 9023 motion, which tolls the 10-day period for appeals. **In re Aguilar**, 861 F.2d 873 (5th Cir. 1988).

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Filed
Oct 28 1997

No. 97-40485
Summary Calendar

In the Matter of:
CLAMONT ENERGY CORPORATION, INC., Debtor

LEO ROGERS DUGAS, Appellant,

versus

CLAMONT ENERGY CORPORATION, INC.,
CLARON CORPORATION, INC., Appellees.

Appeal from the United States District Court
For the Eastern District of Texas
(1:96-CV-478)

Before POLITZ, Chief Judge, JOLLY and STEWART, Circuit Judges. PER CURIAM: *

Leo Roger Dugas, proceeding *pro se,* appeals the district court's denial of his motion to alter and amend judgment made to Federal Rule of Civil Procedure 60(b), and his motion for findings of facts and conclusions of law under Rule 52(b). On April 16, 1996 the bankruptcy court orally announced that this proceeding would be remanded to state court. On May 9, 1996 Dugas moved for reconsideration five days before the court signed a written order on remand.

---

* Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

The bankruptcy court denied that motion on June 11, 1996 and Dugas appealed that order 17 days later, on June 28,

1996. On September 26, 1996 the district court dismissed Dugas' appeal for failure to file a timely notice of appeal. Dugas timely appealed to this court.(1) On December 20, 1996 Dugas filed a Rule 60(b) motion asking the district court to alter or amend its September 26 order. On February 26, 1997 the district court denied that motion. On March 5, 1997 Dugas moved for findings of facts and conclusions of law pursuant to Rule 52(b); that motion was denied on March 31, 1997. Dugas timely appealed to this court.

As footnoted, we have this date determined that the district court appropriately dismissed Dugas' appeal for lack of jurisdiction. We now conclude that the district court did not err or abuse its discretion in denying the subsequent motions because they also are precluded from review by the district court for failure of jurisdiction.(2)

The rulings appealed are AFFIRMED.

---

(1) In ruling today we have concluded that the district court did not err in dismissing Dugas' claim for failure of jurisdiction. **Dugas v. Clamont Energy Cor.**, No. 97-40484.

(2) The failure to file a notice of appeal within 10 days after entry of judgment by the bankruptcy court deprives the district court of jurisdiction to consider the appeal. Bankruptcy Rule 8002(b)(2).